IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10261 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

NIHARIKA PLASTIC

Versus

GUJARAT SMALL INSUSTRIES CORPORATION

Appearance:

1. Special Civil Application No. 10261 of 1998

MR MANISH R BHATT for Petitioner No. 1

MR S.N. SHELAT, A.G. with MR PV HATHI

for Respondent No. 1

DELETED for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 16/08/2002

ORAL JUDGEMENT

In this petition, the petitioner has challenged

the recovery proceedings initiated by respondent no. 1 under the provisions of the Gujarat Public Monies (Recovery of dues) Act, 1979.

2. Upon hearing the learned Counsel, I have found that it is not in dispute that some amount is payable by the petitioner to respondent no. 1 though there is some dispute with regard to the amount which is actually payable. Looking to the fact that the petitioner is agreeable to make payment of the amount which is actually payable, without going into the merits of the case and the contentions raised by the learned Counsel, it would be just and proper to give the following directions to the parties so that the amount which is payable by the petitioner to respondent no. 1 can be actually ascertained and paid in suitable instalments but without any further litigation .

3. A representative of the petitioner shall make available all relevant records relating to the accounts of the petitioner and shall try to reconcile the same with the records of respondent no. 1 . The reconciliation shall be done in the presence of a representative of the petitioner and respondent no. 1 shall make available all invoices and vouchers to the representative of the petitioner so that the work with regard to reconciliation can be done faster.

4. The principal amount ascertained after the above referred exercise shall be placed before the Board of respondent no. 1 and the Board shall determine the manner in which the payment shall be made by the petitioner. While determining the manner in which the amount is to be paid by the petitioner, the Board shall take into consideration the financial condition of the petitioner, loss, if any suffered by the petitioner on account of earthquake or due to the communal riots which had taken place in Gujarat and the General market condition prevailing at present so that the amount of instalments may not be too huge for the petitioner to pay. Thus all possible efforts shall be made to see that the petitioner is duly accommodated. The petitioner shall be informed about the manner in which the instalment are to be paid to respondent no. 1.

5. While determining the amount to be paid by the petitioner to respondent no. 1, the Board shall also determine the rate of interest and the period for which the petitioner shall have to make payment of interest to respondent no. 1. It is however directed that the rate of interest shall not be more than 12% per annum in any

case. Whether the amount of interest should be paid alongwith the principal amount or after the payment of the principal amount shall be decided by the Board.

6. The board may also decide whether to charge or change the rate of interest if the entire principal amount is paid as per the instalments determined by the Board.

7. Upon determination of the amount and the manner in which it is to be paid, the petitioner shall file an undertaking before this Court stating that the petitioner shall pay the said amount in the manner determined by the Board.

8. Upon payment of the principal amount as well as the interest, which might be determined by the Board, all proceedings initiated against the petitioner by the respondents, Civil and criminal, shall be brought to an end.

9. The petitioner shall pay the principal amount as well as the amount of interest determined by the Board of respondent no. 1 in the instalments determined by the Board but, if any two consequitive defaults are committed by the petitioner in making the payment, the entire unpaid amount shall become payable immediately and it would be open to respondent no. 1 to take all possible legal actions against the petitioner for recovery of the unpaid amount including recovery of the amount under the provisions of Gujarat Public Money (Recovery of Dues) Act. It is also directed that whenever any default is committed in making the payment, the amount remaining unpaid shall be paid within a period of three months from the date of the default committed.

10. If in any case, the petitioner is aggrieved by determination of the principal amount, which is to be paid to respondent no. 1, the decision of the Board shall not be implemented for a period of four weeks form the date of its communication to the petitioner.

Looking to the facts of the case, the petition is allowed and rule is made absolute with no order as to costs.

(A.R DAVE,J.)

siji